

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 03-73

May 2, 2003

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Nationwide Settlement Involving National Medical Care, Inc. d/b/a
Fresenius Medical Care, North America

Region 18 (Minneapolis) recently approved an Informal Settlement Agreement involving National Medical Care, Inc. d/b/a Fresenius Medical Care, North America. The agreement includes a provision that the Employer post a Notice to Employees at each of its facilities in the United States. The Employer has over 1200 facilities in 40 states, the District of Columbia and Puerto Rico. Because of the national character of the Employer's operations, as well as a provision of the settlement that provides for a possible remedy for individuals not specifically named in the agreement, all Regions are being advised of the details of the settlement.

In the settlement the Employer agrees to change existing rules in its Employer Handbook, Human Resource Policy Manual and other company documents that prohibit employees from: (1) discussing rates of pay or terms and conditions of employment with one another; (2) soliciting employees in work areas during non-work times; (3) soliciting employees by applying undue pressure or causing embarrassment to employees; and (4) associating with or having significant interest in any party whose interests might conflict with Fresenius.

During the investigation of the charges, Region 18 issued an investigative subpoena requiring the Employer to turn over records of all discipline issued to employees for violating the rules covered by the settlement. The Employer turned over discipline issued to various employees at its facility in Marion County, South Carolina, and the discharge of an employee at its facility in East New Orleans, Louisiana. Included in the settlement is the Employer's agreement to revoke the discipline issued to employees in Marion County. The Employer and Region 18 are continuing discussions to attempt to settle the discharge case. The Employer maintains that no other discipline issued as a result of the rules covered by the settlement agreement. However, Region 18 included a provision in the agreement that states:

This Agreement also does not preclude employees or former employees of National Medical Care, Inc. d/b/a Fresenius Medical Care, North America, who are not specifically named in this Agreement or the attached Notice to Employees, from

filing a claim under this charge that they were disciplined or discharged on or after May 4, 2002 for violating one or more of the rules or policies that are identified in the attached Notice to Employees; and General Counsel reserves the right to pursue a remedy on behalf of those employees.

Please make your staff aware of the existence of this settlement agreement, which is being prepared and distributed by Region 18. While Region 18 will ensure compliance with the terms of the Informal Settlement Agreement, in order to fulfill this responsibility Region 18 needs to be informed of any Fresenius employees or former employees who contact Regional Offices about discipline issued to them or discharges for violating any of the rules covered by the settlement agreement. However, before contacting Region 18 your office should assist such an individual in filing a charge in order to ensure that the individual's rights under the Act are fully protected. Thereafter, if your office ascertains that a current or former employee of Fresenius Medical Care, North America was disciplined or discharged on or after May 4, 2002, and that the discipline or discharge was issued because of a violation of one of the four rules identified above, please direct that person to contact Region 18 Compliance Officer Roger Czaia at (612) 348-1770. Also contact Compliance Officer Czaia in the event a caller contends that the Employer is not complying with the terms of the Settlement Agreement. If you or your staff have any questions about the terms of the Settlement Agreement or whether a particular situation is contemplated to be covered by it, please contact Region 18 Regional Attorney Marlin Osthus at (612) 348-1796.

/s/
R.A.S.

cc: NLRBU

